

Attorney Docket No.
11321/P066WOUS

**CERTIFICATE OF ELECTRONIC FILING
PURSUANT TO § 1.6(a)(4)**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system

Dated: December 14, 2009
Electronic Signature for Sharon V. Hart: /Sharon V. Hart/

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application: Valery N. Khabashesku, *et al.*
Serial No. 10/559,905
Filed: December 08, 2005
Art Unit: 1796
Examiner: Michael J. Feely
Confirmation No. 1062
For: Fabrication of Carbon Nanotube Reinforced Epoxy Polymer Composites
Using Functionalized Carbon Nanotubes

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
DETERMINATION UNDER 37 C.F.R. 1.705(d)**

Sir:

Pursuant to 37 C.F.R. § 1.705(d), Patentees respectfully request reconsideration of the patent term adjustment indicated on United States Patent No. 7,601,421 ('421 patent). Patentees respectfully contend that as of the issuance of the patent on October 13, 2009, the correct patent term adjustment should be 827 days, and not 518 days as indicated on the '421 patent.

Patentees provide a statement of the facts involved, including the bases under 37 C.F.R. §1.702 for Patentee's calculation of the correct patent term adjustment of 827 days, beginning on page 2 of this paper.

Remarks

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) provided with the Issue Notification mailed September 23, 2009, and provided on the '421 patent, and in light of the recent ruling in *Wyeth v. Dudas*, 88 U.S.P.Q.2d 1538 (D.D.C. 2008), Patentees submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. § 1.70(d) along with the required fee set forth in 1.18(e), and respectfully request that the '421 patent be granted an additional 309 days of patent term. As stated in 37 § 1.705(d):

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

This request is being submitted within two months of the date the patent issued and thus complies with the relevant deadline specified in 37 C.F.R. § 1.705(d).

The data available on PAIR indicates that the '421 patent has been granted 518 days of Patent Term Adjustment. Patentees submit that, due to the recent *Wyeth* decision, the correct Patent Term Adjustment should be 827 days. Patentees, therefore, request that the above-captioned patent be granted an additional 309 days of patent term.

Pursuant to 37 C.F.R. § 1.705(b)(2)(iii), Patentees note that the '421 patent is not subject to terminal disclaimer.

Calculation

Patentees agree with the Patent Office's initial determination, which, for purposes of this request and in keeping with the explanation provided in *Wyeth*, Patentees will refer to as the "A-delay." In the "A-delay" the Patent Office delayed prosecution by issuing in the first communication (Restriction Requirement, July 10, 2008) 14 months plus 518 days after the filing of the application (37 CFR

1.703(a)(1)), **371 completion date**, resulting in a USPTO “A-delay” of 518 days as illustrated in Table 1 below.

Table 1: PTO A-Delay

UTPTO Delay under 37 C.F.R. 1.703	Date of Patentees Action	Expected Date of USPTO Action	Actual Date of USPTO Action	USPTO Delay	Correctly calculated in the original PTA calculation on PAIR?
1.703(a)(1)	December 08, 2005 (371 Completion Date)	February 08, 2007	July 10, 2008	518 days	YES
Total A-Delay				518 days	YES

The Patent Office, however has not included in the Patent Term Adjustment the days related to the “B-delay,” which are the days delay resulting from an application pending longer than three years.

According to 37 C.F.R. § 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued . . .

The instant application was filed on December 08, 2005. Patentees’ patent issued on October 13, 2009, which is three years plus 309 days after the filing date.

However, the *Wyeth* decision states that “the ‘A period’ and ‘B period’ overlap only if the occur on the same calendar day or days.” *Wyeth*, 88 U.S. P.Q.2d at 1540. In this instance, there are no overlapping periods, in which the “B-delay” overlapped calendar days with the A-delay.” In this case, the USPTO is responsible for a single “A-delay,” which occurred within the first three years of pendency, thus there is not overlap between the “A-delay” and the “B-delay.” Thus, the resulting “B-delay” is 309 days as illustrated in Table 2 below.

Table 2: PTO B-Delay

UTPTO Delay under 37 C.F.R. 1.703(b)	Date of Patentees Action	Expected Date of USPTO Action	Actual Date of USPTO Action	USPTO Delay	Correctly calculated in the original PTA calculation on PAIR?
1.703(b)	December 08, 2005 (371 Completion Date)	December 08, 2008	October 13, 2009	309 days	NO
Total B-Delay				309 days	NO

Thus, according to the *Wyeth* decision, Patentees are entitled to both the “A-delay” of 518 days and the “B-delay” of 309 days, minus any overlap that occurs on the same calendar day (0 days), and minus any Patentees delay (0 days). Thus, the total Patent Term Adjustment due to both the “A” and “B” delays, minus any overlap and minus Patentees delay is 827 days as illustrated in Table 3 below.

Table 3: Calculation of Correct Patent Term Adjustment

A-Delay	518 days
B-Delay	309 days
A-Delay + B Delay	827 days
Overlapping A-Delay	0 days
Patentees Delay	0 days
Correct Patent Term Adjustment:	827 days

For these reasons, the Patent Term Adjustment for this case should be 827 days. In light of the foregoing, the Patentees respectfully request that an additional 309 days of Patent Term Adjustment be added to the patent term for the Patent Term delay, resulting in a total Patent Term Adjustment of 827 days.

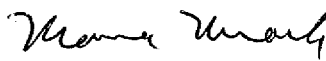
If the Examiner believes it to be helpful, the Examiner is invited to contact the undersigned representative at (713) 650-2663. The Commissioner is authorized to charge the amount of \$200.00 for the filing of an application for patent term adjustment under 37 C.F.R. §1.705(b), pursuant to 37 C.F.R. 1.18(e) to Winstead PC Deposit Account 23-2426.

Dated: December 14, 2009

Respectfully submitted,

WINSTEAD PC

By:



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AGENT FOR APPLICANT